संख्याः 12/2016 /जी-2-175 /दस-2016-2(विविध)/दस/14

प्रेषक,

अनूप चन्द्र पाण्डेय
प्रमुख सचिव,
उ0प्र0 शासन।

सेवा में,

समस्त प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।

वित्त (सामान्य) अनुभाग-2 लखनऊः दिनांक 02 दिसम्बर, 2016

विषयः- दैनिक वेतन/कार्य प्रभारित कर्मचारियों को विनियमितीकरण के उपरान्त दैनिक वेतन/कार्य प्रभारित कर्मचारी के रूप में की गयी सेवा को जोड़कर वेतनवृद्धि एवं समयमान वेतनमान आदि का लाभ अनुमन्य कराये जाने के सम्बन्ध में विधिक परामर्श।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि वित्तीय हस्तपुस्तिका खण्ड-2 भाग-2 से 4 के मूल नियम-26 में सरकारी सेवकों को वेतनवृद्धि अनुमन्य कराये जाने तथा सिविल सर्विस रेग्युलेशन के अनुच्छेद-370 में पेंशन की अनुमन्यता के सम्बन्ध में प्रावधान किये गये हैं जिसके अनुसार वेतनवृद्धि, पेंशन आदि का लाभ केवल शासकीय कर्मचारियों को ही प्रावधानित व्यवस्था के अन्तर्गत अनुमन्य है। चूंकि दैनिक वेतन/कार्य प्रभारित कार्मिकों की सेवायें संविधान के अनुच्छेद 309 के अधीन बनायी गयी सेवा नियमावली से आच्छादित नहीं होती है अतः दैनिक वेतन/कार्य प्रभारित कर्मचारी सरकारी सेवकों की श्रेणी में नहीं आते हैं अतः उन्हें उक्त नियमों के अन्तर्गत वेतनवृद्धि, पेंशन, समयमान वेतनमान आदि की सुविधा देय नहीं है।

2- रिट याचिका संख्या-4489/2002 हंसादत्त बहुगुणा बनाम उ0प्र0 राज्य व अन्य में मा0 उच्च न्यायालय द्वारा पारित निर्णय दिनांक 05 जुलाई, 2006 में मा0 उच्च न्यायालय ने दैनिक वेतन/वर्कचार्ज सेवा को जोड़कर वेतनवृद्धि/ समयमान वेतनमान देने के आदेश पारित किये थे जिसके आधार पर रिट याचिका संख्या-64580/2008 दिलीप कुमार सिंह बनाम उ0प्र0 राज्य व अन्य एवं रिट यचिका संख्या-584(एस0एस0)/2009 जगदीश सिंह व अन्य बनाम उ0प्र0 राज्य व अन्य के याचिकाकर्ताओं को भी सम्बन्धित प्रशासनिक विभाग द्वारा दैनिक वेतन/वर्कचार्ज पर की गयी सेवाओं को जोड़कर वेतनवृद्धि एवं समयमान वेतनमान के लाभ अनुमन्य करा दिये गये। जबकि मा0 उच्च न्यायालय के आदेश याचिकाकर्ताओं की मांग पर रिट याचिका संख्या-4489(एस0एस0)/2002 हंसादत्त बहुगुणा बनाम उ0प्र0 राज्य व अन्य के आधार पर विचार किये जाने के थे।

3- रिट याचिका संख्या-4489(एस0एस0)/2002 हंसादत्त बहुगुणा बनाम उ0प्र0 राज्य व अन्य में

-2-

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है ।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

मा0 उच्च न्यायालय ने मा0 उच्चतम् न्यायालय में योजित हरियाणा सरकार की अपील संख्या-5740-5741/1997 हरियाणा सरकार बनाम रवीन्द्र कुमार में मा0 उच्चतम् न्यायालय द्वारा पारित निर्णय को आधार बनाया था जिसका संगत अंश निम्नवत् है:--

" It is conceded by the learned council appearing for the State that in these cases we are concerned with employees who had been engaged initially on work charge basis and later on they were regularized and brought into cadre of the service. It is also not disputed by the learned counsel appearing for the State that this period which the employees had rendered as work charge basis count for the purpose of the increment in the cadre as well as the qualifying service for the pension. We therefore see no justification on not counting their period for the purpose of giving additional increment on completion of 8 and 18 years of service as well as 10 and 20 years of service for getting higher scale as per as the Government Circulars, which obviously are intended to avoid stagnation in a particular grade."

4- मा0 सर्वोच्च न्यायालय के उक्त आदेश से स्पष्ट है कि मा0 सर्वोच्च न्यायालय द्वारा श्री रवीन्द्र कुमार की वर्कचार्ज की सेवाओं को जोड़ते हुए समयमान वेतनमान का लाभ अनुमन्य कराया जाना इसलिये औचित्यपूर्ण पाया गया था क्योंकि हरियाणा सरकार का पक्ष प्रस्तुत करने वाले अधिवक्ता द्वारा यह अस्वीकार नहीं किया गया था कि वहाँ के वर्कचार्ज कर्मचारियों की वर्कचार्ज की सेवावधि को उनके विनियमित होने पर न केवल वेतनवृद्धि के लिये जोड़ने हेतु संज्ञान में लिया जाता है अपितु उक्त अवधि पेंशन हेतु अर्हकारी सेवा के रूप में भी मानी जाती है।

5- जबकि प्रदेश सरकार में दैनिक वेतन/कार्यप्रभारित रूप में की गयी सेवा को सरकारी सेवा के रूप में नहीं माना जाता है और न ही उसका लाभ विनियमितीकरण के पश्चात् की गयी सेवा में जोड़कर अनुमन्य कराये जाने का नियमों में कोई प्रावधान है। लोक निर्माण विभाग में दैनिक वेतन पर अवर अभियन्ता के पद पर कार्यरत हसन अख्तर व अन्य याचीगणों द्वारा भी मा0 उच्च न्यायालय में रिट याचिका संख्या-3509/2010 हसन अख्तर व अन्य बनाम उ0प्र0 राज्य व अन्य द्वारा योजित की गयी जिसमें मा0 उच्च न्यायालय ने निर्णय दिनांक 27 मई, 2010 द्वारा प्रत्यावेदन निस्तारित किये जाने के आदेश पारित किये थे। मा0 उच्च न्यायालय द्वारा पारित उक्त निर्णय के अनुपालन के संदर्भ में वित्त विभाग द्वारा मा0 महाधिवक्ता का विधिक परामर्श प्राप्त किया गया, जिसके सम्बन्ध में मा0 महाधिवक्ता ने यह परामर्श दिया है कि मा0 उच्चतम् न्यायालय ने पंजाब स्टेट इलेक्ट्रीसिटी बोर्ड व अन्य बनाम जगजीवन राम व अन्य (2009) 1 एस0सी0सी0(एल0 एण्ड एस0) 769 में पारित निर्णय में कार्यप्रभारित कर्मचारियों को नियमित कर्मचारियों से भिन्न माना है और यह कहा है कि हरियाणा सरकार बनाम रवीन्द्र कुमार में पारित मा0 उच्चतम् न्यायालय का निर्णय बाध्यकारी नहीं है।

6- अतः राज्य सरकार के नियमों एवं प्रावधानों के अन्तर्गत दैनिक वेतन/ कार्यप्रभारित कर्मचारी के

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है ।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

रूप में की गयी सेवा को विनियमितीकरण के उपरान्त की गयी सेवा में जोड़कर उसका लाभ वेतनवृद्धि, पेंशन अथवा अन्य कोई लाभ अनुमन्य कराये जाने की व्यवस्था नहीं है। मा0 महाधिवक्ता का विधिक परामर्श संलग्न कर आपको इस आशय से भेजा जा रहा है कि जहॉ कही भी दैनिक वेतन/कार्यप्रभारित सेवा को जोड़कर उसका सेवाकाल में अथवा सेवानिवृत्ति के उपरान्त देय लाभों हेतु प्रकरण प्रस्तुत हों, उसका निस्तारण मा0 महाधिवक्ता के संलग्न विधिक परामर्श के अनुसार किया जाना सुनिश्चित् करें।

संलग्नक-यथोक्त।

भवदीय,

अनूप चन्द्र पाण्डेय

प्रमुख सचिव

संख्या- 12/2016 /जी-2-175(1)/दस-2016-2(विविध)/दस/14, तददिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

1 महालेखाकार, लेखा एवं हकदारी, प्रथम, उत्तर प्रदेश, इलाहाबाद।

2. प्रमुख सचिव, विधान सभाविधान परिषद्/, उत्तर प्रदेश, लखनऊ।

3. प्रमुख सचिव, मा0 मुख्यमंत्री, उत्तर प्रदेश शासन।

4 स्टॉफ आफिसर, मुख्य सचिव, उत्तर प्रदेश शासन।

5. निदेशक सूचना एवं जनसम्पर्क विभाग, उत्तर प्रदेश।

आज्ञा से,

नीरजा सक्सेना

अनुसचिव

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

The Principal Secretary, Law.

Ref.: File No. 12(53) NG/10 Vitt (Samanya) Anubhag-2

Sub.:Legal Opinion.

Opinion has been sought from me by the Law Department on 16.02.2016. Earlier an incomplete file had been sent to me on 05.06.2015, which I had returned with the following note on 25.02.2015:

> *"I will require the complete file containing opinion of the Law Department, orders passed by the Hon'ble Supreme Court in similar matters in Special Leave Petition and Special Appeals should also be sent. It would only then be possible for me to apply my mind and give relevant advice /legal opinion."*

From a perusal of the record, it is evident that originally one Writ Petition No. 4489 (S/S) of 2002 (Hansa Dutt Bahuguna v. State of U.P. & others) was decided by the Single Judge on 05.07.2006 placing reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of *"State of Haryana v. Ravindra Kumar – Civil Appeal No. 6740-6741/1997"*. Similar orders were passed in the case of Suresh Pal & others and in the case of Abdul Haq & others. Against the orders passed in the case of Hansa Dutt Bahuguna, Suresh Pal, Special Appeals were filed, which were dismissed by a detailed order by the Division Bench of the High Court on 07.05.2009. The Hon'ble Single Judge and the Division Bench had relied upon Government Orders meant for Government Servants and not for Dailywage/ Work Charge Employees. Dailywage/ Work Charge employees are not Government Servants as held by the Full Bench of the High Court in the case of Pawan Kumar Yadav v. State of U.P. & others – 2010 LCD 1493.

The Order of the Division Bench was clearly wrong as it relied upon the Government Order dated 02.12.2000 giving Timescale, Selection Grade on completion of requisite number of years of service to Government Servants working in the payscale up to Rs.10500/-. The State Government filed Special Leave Petition thereafter, which were dismissed on 20.09.2010 by the following order :-

> *"Delay condoned.*
>
> *Special Leave Petitions are dismissed. However, the question of law raised is kept open."*

The State Government should not have filed a Review Petition against such orders, however, Review Petitions were filed against the order dated 20.09.2010, which were rejected by the following order :-

> *"Delay condoned. We have gone through the Review Petition and connected papers. In our opinion no case for review is made out, hence, the Review Petition is dismissed."*

Obviously the Hon'ble Supreme Court was looking into its order dated 20.09.2010, wherein the Hon'ble Court had left the question of law while dismissing the Special Leave Petition. Dismissal of Special Leave Petitions being in limine and the question of law being left open by the Hon'ble Supreme Court, there was no necessity to file Review Petition in the first place. However, the Review Petitions were filed and they were dismissed *in limine* also.

In the meantime the Hon'ble Supreme Court in the case of "Punjab State Electricity Board & Ors. Vs. Jagjiwan Ram & Ors., (2009) 1 SCC (L&S) 769" held that Work Charge Employees are different from regular employees and the decision rendered in the case of State of Haryana v. Ravindra Kumar was on the basis of a concession given by the Counsel for the Appellant State of Haryana and the said judgment in the case of Ravindra Kumar cannot be treated as a binding precedent. A Division Bench of the Allahabad High Court thereafter in another Special Appeal filed by the State of U.P. on 24.11.2010 in Special Appeal No. 16/2010 (State of U.P. v. Surja Beldar) observed as under :-

> *".....Learned counsel for the State Sri Anuj Kudesia has submitted that the order dated 14.10.09 passed by the learned Single Judge is based upon the judgement passed in Writ Petition No. 4489 (SS) of 2002: Hansa Dutt Bahuguna and others vs. State of U.P. and another, which judgement was passed on the basis of the judgement of the apex court in the case of State of Haryana and others v. Ravindra Kumar and others passed in Civil Appeal No. 6740-6741 of 1997 but since the judgement in the case of Ravindra Kumar has been distinguished in view of the case of Punjab State Electricity Board and others v. Jagjiwan Ram and others, (2009) 3 SCC 661, therefore, the respondents cannot be allowed the benefit of time bound promotional scale etc. as directed by the learned Single Judge.*

We therefore, stay the order dated 14.10.09 passed by the learned Single Judge. ....."

That similarly in another Special Appeal No. 34 of 2010 (State of U.P. & others v. Ram Pal & 33 others), the Hon'ble Division Bench vide its order dated 24.11.2010 observed as under :

"The case of Hansa Dutt Bahuguna and others (Supra), was decided on the basis of the judgment passed by the Apex Court in the case of State of Haryana & others Vs. Ravindra Kumar & others, Civil Appeal No. 6740-6741 of 1997.

Admittedly, the respondents were appointed on daily wage basis on different posts in Class IV category, namely; Beldar and Mates. They were later on transferred to work-charge establishment on different dates and some of the respondents were directly engaged in the work-charge establishment, where their services were regularized subsequently.

The grievance arose as despite having worked for substantial period in the department, the services rendered by them in the work-charge establishment, were not being counted for grant of additional increments etc., as observed above.

Feeling aggrieved by the refusal on the part of the State to give the aforesaid benefit they preferred writ petitions, which have been decided as described aforesaid in the preceding paragraphs.

A perusal of the impugned order passed by the learned Single Judge reveals that he has relied upon the case of Hansa Dutt Bahuguna and others (Supra), which was decided in accordance with the pronouncement made in the case of Ravindra Kumar.

In the case of Punjab State Electricity Board and others Vs. Jagjiwan Ram and others, (2009) 3 Supreme Court Cases 661, the question arose whether the respondents, initially appointed as work-charge employees and whose services were subsequently regularized, were entitled to get their services rendered as work-charge employees, counted and clubbed with their services after regularization for the purpose of grant of revised pay scales, additional increments etc., on completion of requisite period.

The Apex Court pronounced that the services rendered by the respondents as work-charge/adhoc employees, cannot be clubbed with their services rendered after regularization, for the

purpose of grant of additional increments, promotional pay scale etc. unless a specific provision to that effect is made either in the relevant statute or in the scheme of regularization.

The law, thus, pronounced by the Supreme Court does not allow the respondents to get their period of services rendered in the work-charge establishment as work-charge employees, to be counted along with the services they rendered after regularization in the regular establishment for the purpose of getting the benefit of increments etc.

The Supreme Court also considered the case of Ravindra Kumar and held that it was an order passed on concession of the State and such an order was not binding.

That being the legal position with respect to the status of services rendered by the respondents as work-charge employees, that period of services cannot be counted with the period of services rendered after regularization for claiming the benefits, claimed in the writ petition.

The special appeal is allowed.

The judgment and order dated 14.9.2009, passed by the learned Single Judge, in W.P. No. 6603 (SS) of 2007, therefore cannot be sustained and is hereby set aside."

In the case of Ram Pal & 33 others, Writ Petition No. 6603 of 2007, the Hon'ble Single Judge had disposed of Writ Petition on 14.09.2009 with the following observations :-

"Considering the aforesaid facts and circumstances of the case, the writ petition is disposed of finally with a direction to the opposite parties to consider the case of the petitioner, in the light of the observations made Hansa Dutt Bahuguna (Supra) and State of Haryana (supra) and pass appropriate speaking and reasoned order, expeditiously say within a period of three months from the date of receipt of a certified copy of this order."

Judgment in the case of Hansa Dutt Bahuguna (supra) has been relied upon in several similar cases namely Writ Petition No. 3509 (S/S) of 2010 – Hasan Akhtar & others v. State of U.P. & others – decided on 27.05.2010, Writ Petition No. 3414 (S/S) of 2010 – Hridya Nath Chaubey & others v. State of U.P. & others – decided on 26.05.2010 and Writ Petition No. 3657 (S/S) of 2010 – Rajesh Kumar Dwivedi & others v. State of U.P. & others – decided on 28.05.2010

and Writ Petition No. 64580 (S/S) 2008 (Dileep Kumar Singh v. State of U.P. & others) – decided on 29.08.2013, wherein the benefit of judgment rendered in Writ Petition filed by Hansa Dutt Bahuguna have been claimed, but the Hon'ble Court had disposed of the Writ Petition only with the direction " ..... *Considering the aforesaid facts and circumstances of the case, the writ petition is disposed of finally with a direction to the opposite parties to consider the case of the petitioners, in the light of the observations made Hansa Dutt Bahuguna (Supra) and State of Haryana (supra) and pass appropriate speaking and reasoned order, expeditiously say within a period of three months from the date of receipt of a certified copy of this order.....* "

From a perusal of the records, it is evident that exactly the same language was used by an Hon'ble Single Judge while disposing of the Writ Petition filed by Ram Pal & 33 others, which was decided by the Hon'ble Single Judge against which, Special Appeal No. 34/2010 referred to hereinabove was filed and allowed by the Hon'ble Court on 24.11.2010.

I do not see any reason why the Administrative Department is insisting on giving the benefit given to Hansa Dutt Bahuguna, Jagdish Singh, Suresh Pal in whose cases, the matter went up to the Hon'ble Supreme Court and the Special Leave Petition was dismissed in limine leaving the question of law open.

It is settled law that dismissal of Special Leave Petition in limine or leaving the question of law open, does not constitute a binding precedent. The dismissal of Special Leave Appeal *in limine* does not make the order of the Hon'ble Supreme Court stand substituted in place of the order under challenge. All that it means is that the Hon'ble Supreme Court was not inclined to exercise its discretion under Article 136. The Petitioners place reliance upon the following cases:-

a. *Union of India V. Sher Singh – 1997 (3) SCC 555.*

b. *Kunhayammad and others V. State of Kerala – 2000 (6) SCC 359.*

c. *Gaon Sabha V. Nathi – 2004 (2) SCC 555.*

d. *Niyas Ahmad Khan V. Mahmood Rahmat Ulla Khan – 2008 (9) SCC 447.*

VIJAY PRATAP SINGH
ADVOCATE GENERAL
UTTAR PRADESH

A Full Bench of Allahabad High Court in the case of "Paresh Yadav v. State of U.P. on 08.08.2014 (reported in 2014 (7) ADJ) has held that dismissal of Special Leave Petition does not lead to merger of decision of High Court in that of Supreme Court or that the Supreme Court has approved of the reasons given by the High Court in its decision.

In the case of Hansa Dutt Bahuguna and Jagdish Singh, orders in compliance of the decision in Special Leave Petition in their individual cases were issued, but that does not bind the Government for issuing similar orders in other cases also looking into the fact that exactly same language having been used by a Single Judge in the case of Ram Pal & 33 others has been disapproved by a Hon'ble Division Bench.

It would also be apposite to note that a Full Bench of the Allahabad High Court in the case of Babu Ram v. State of U.P., decided on 18.03.2016 relying upon its earlier judgments held that Work Charge Employees are not Government Servants and therefore service rendered before regularization cannot be counted as qualifying service for pension.

The Law on the subject being clear that Dailywage/ Work Charge Employees after being regularized cannot claim service benefits and the same being reiterated again & again by the Hon'ble Supreme Court and the Hon'ble High Court, it would be appropriate that the Administrative Department decides the representation of the Hridya Nath Chaubey, Hasan Akhtar & others in terms of law finally settled by the High Court as well as Supreme Court regarding inadmissibility of service benefits for the period of service rendered in the Work Charge Establishment before regularization. This in my opinion would be sufficient compliance of Judgments passed in the case of Hasan Akhtar and Hridya Nath Chaubey.

(Vijay Bahadur Singh)
12/4/2016
VIJAY BAHADUR SINGH
ADVOCATE GENERAL,
UTTAR PRADESH

Principal Secretary, Law
12.4.16

सं०सचिव (SPM)
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संस्थागत वित्त एवं बाह्य सहायतित परियोजना।
उत्तर प्रदेश शासन।

अनुसचिव
13/04/16

प्रमुख सचिव

(अब्दुल मतीन
प्रमुख सचिव
न्याय, विधायी, संसदीय कार्य
एवं विधि परामर्शी
उत्तर प्रदेश शासन।)

13/4/16